

## REMARKS

To provide a clear and concise response to the Office Action, Applicant will first address the anticipation rejections under 35 U.S.C. § 102(b); then the obviousness rejections under 35 U.S.C. § 103(a); then the objection made that claims 1-5, 7, 8, and 14 do not read on the elected invention; the objection to the drawings; and finally the new claims.

### **Anticipation Rejections under 35 U.S.C. § 102(b)**

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987); MPEP § 2131. However, “[t]o anticipate, the reference must also enable one of skill in the art to make and use the claimed invention.” *Bristol-Myers Squibb Co. v. Ben Venue Laboratories, Inc.*, 246 F.3d 1368, 1374 (Fed. Cir. 2001) (citing *In re Donohue*, 766 F.2d 531, 533, 226 USPQ 619, 621 (Fed.Cir.1985)). To determine whether a claim has been anticipated by a specific reference, the claim “must be interpreted as broadly as [its] terms reasonably allow.” MPEP §2111.01 (citing *In re American Academy of Science Tech Center*, 367 F.3d 1359 (Fed. Cir. 2004)). In interpreting a claim, its “terms are presumed to have the ordinary and customary meanings attributed to them by those of ordinary skill in the art.” *Id.* (citing *Sunrace Roots Enter. Co. v. SRAM Corp.*, 336 F.3d 1298, 1302, 67 USPQ2d 1438, 1441 (Fed. Cir. 2003); *Brookhill-Wilk 1, LLC v. Intuitive Surgical, Inc.*, 334 F.3d 1294, 1298, 67 USPQ2d 1132, 1136 (Fed. Cir. 2003)). But the applicant is entitled to be his own lexicographer and define specific terms used to describe his invention. MPEP § 2111.01.

### **35 U.S.C. § 102(b) Rejection of Claim 1 as Anticipated by Stern**

Claim 1 stands rejected as anticipated by Stern, U.S. Patent No. 5,594,960. The rejection points to Figure 8 in Stern where the debris filter 16 is located in the opening of the cover 10.

However, claim 1 requires a basin interconnected with the debris filter. Stern does not disclose a basin. Since each and every element as set forth in claim 1 is not found in Stern, Stern does not anticipate claim 1. *See Verdegaal Bros.*, 814 F.2d at 631; MPEP § 2131. Applicant therefore respectfully requests that this rejection be withdrawn.

**35 U.S.C. § 102(b) Rejection of Claim 1 as Anticipated by Crandall**

Claim 1 stands rejected as anticipated by Crandall, U.S. Patent No. 5,259,078. The rejection points to aperture 22 of Crandall as well as debris filter 28 located in said aperture.

However, claim 1 requires a basin interconnected with the debris filter. Crandall does not disclose a basin. Since each and every element as set forth in claim 1 is not found in Crandall, Crandall does not anticipate claim 1. *See Verdegaal Bros.*, 814 F.2d at 631; MPEP § 2131. Applicant therefore respectfully requests that this rejection be withdrawn.

**35 U.S.C. § 102(b) Rejection of Claims 9-11 and 13 as Anticipated by Loft, Jr.**

Claims 9-11 and 13 stand rejected as anticipated by Loft, Jr., U.S. Patent No. 6,260,217. The rejection provides that slotted tube 14 is the debris filter, which extends through the opening in the cover and is connected to a drain 17 via elbow 16 (see col. 2, lines 32-36).

Claim 9, however, has been amended to include the limitation that said drain assembly includes a basin located below said pool cover. Because Loft, Jr. does not disclose a basin and this element is now required by claim 9, each and every element as set forth in amended claim 9 is not found in Loft, Jr. Since claims 10, 11, and 13 depend from claim 9, each of them contains the same element that is not present in Loft, Jr. Applicant therefore respectfully requests that the rejection of claims 9-11 and 13 as being anticipated by Loft, Jr. be withdrawn.

**35 U.S.C. § 102(b) Rejection of Claims 9, 13, 15, and 17 as Anticipated by Day**

Claims 9, 13, 15, and 17 stand rejected as anticipated by Day, U.S. Patent No. 1,857,362. The rejection points to debris filter 16, basin 15, and pipe 19 with cover 12 in Day. Applicant

respectfully traverses this rejection because Day does not teach or disclose, expressly or inherently, a “flexible pool cover” as required by amended claim 9. Moreover, Day does not enable the practice of the element of the current invention that the “debris filter [is] disposed within said aperture of said pool cover.”

In Day, the disclosed cover is a “floating roof.” p.1, ll.33-38. This is not the same as the flexible pool cover element of claim 9. The floating roof of Day is shown in the drawings as having a substantial thickness and the specification reveals that it is “preferably dished toward the center.” In the current invention, the specification describes a flexible pool cover that is essentially a membrane that is positioned at least generally atop the pool 12, p.5, ll.4-5, and there is no indication that the pool cover 22 is free to float up and down as the water level changes. Thus the floating roof of Day does not teach the pool cover element of claim 9 and therefore does not constitute anticipatory prior art. *See Verdegaa Bros.*, 814 F.2d at 631; MPEP § 2131.

Day further fails to enable the practice of the limitation that the “debris filter [is] disposed within said aperture of said pool cover.” Day discloses that the coverplate 16 (cited as the debris filter) is attached to the sump 15 (cited as the basin), p.1, ll.42-43, but provides no indication of how this assembly is attached to the cover 12, much less that the coverplate, *i.e.* debris filter, is disposed within the aperture through the floating cover. Inspection of Figures 1 and 2 of Day reveals conflicting information relative to the location of the coverplate. Figure 1 shows that the perimeter of the sump and the coverplate are in alignment, and the section removed from the floating roof reveals that the sump is below the floating roof and the coverplate is located on the upper surface of the floating roof. On the other hand, Figure 2 shows the coverplate located on the bottom surface of the floating roof. Neither figure, however, discloses the coverplate being “disposed within said aperture of said [floating roof].” Thus Day does not anticipate claim 9 of

the present invention because it does not “enable one of skill in the art to make and use the claimed invention.” *Bristol-Myers Squibb Co.*, 246 F.3d at 1374.

Finally, the present invention is directed at a pool cover assembly that utilizes a drain assembly attached to a flexible pool cover that is a thin membrane. Much of the disclosure is directed at enabling one of ordinary skill in the art to successfully mount a drain assembly in such a flexible, membrane-type cover. On the other hand, Day teaches the use of a sump attached to a rigid floating roof. Considering the lack of discussion as to how the sump is to be attached, one can only assume that it is mounted directly to the floating roof with a common method of fastening such as screws. This does not teach or enable the practice of the current invention, which requires the area of the pool cover surrounding the aperture to be compressed between the support retainer 46 and the basin 40 with gaskets 46a and 46b acting to seal the assembly to prevent the pool water from entering the drain assembly. Thus Day does not “enable one of skill in the art to make and use the claimed invention” and therefore does not anticipate claim 9. *Bristol-Myers Squibb Co.*, 246 F.3d at 1374.

For the foregoing reasons, Applicant respectfully requests that the rejection of claim 9 as being anticipated by Day be withdrawn. Since claims 13, 15, and 17 depend directly or indirectly from claim 9, Applicant further requests that the rejection of these claims also be withdrawn.

#### **Obviousness Rejections under 35 U.S.C. § 103(a)**

Claims 12 and 16 stand rejected under 35 U.S.C. § 103(a) as being obvious in light of different combinations of prior art. Applicant respectfully asserts the claimed invention has not been fully understood and that a *prima facie* case of obviousness has not been made out.

Applicant has amended independent claim 9 to further clarify the invention from the prior art and

has provided reasoning below as to why the cited art does not render the rejected claims obvious. Therefore, Applicant respectfully requests that the rejection of these claims be withdrawn.

Three criteria must be met for a *prima facie* case of obviousness to be established. MPEP § 2142 (citing *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991)). First, the suggestion or motivation to modify the reference or to combine reference teachings must be found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. *Id.* “Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.” *Id.* And “[t]he teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure.” *Id.*

Applicant respectfully submits that these criteria have not been met in the case of the claims rejected in the Office Action, especially in light of the amendments made to independent claim 9. The discussion below points out in detail why each of the cited combinations of prior art do not render the cited claims obvious. From the outset, Applicant recognizes that “nonobviousness cannot be shown by attacking references individually where the rejections are based on combinations of references.” *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986); MPEP § 2145. Nevertheless, the teachings in the individual references must be considered when analyzing whether the hypothetical structure that would have resulted from the combined teachings would have included all of the claimed features and whether one of ordinary skill in the art would have considered combining such teachings. Thus a discussion of the individual references is

warranted since Applicant has amended independent claim 9 to further illustrate the elements of Applicant's invention.

**35 U.S.C. § 103(a) Rejection of Claim 12 as Being Obvious Based on Loft, Jr.**

The rejection provides that it is an obvious expedient of design to the ordinary artisan to provide any desired weight to create pooling of water on the cover.

Applicant has amended claim 9 to require that the drain assembly include a basin located below said pool cover. Since Loft, Jr. does not teach the use of a basin located below the pool cover, it does not teach or suggest all of the limitations of claim 12. Since there is no additional prior art cited, only that providing sufficient weight would be an obvious design expedient, the cited reference does not "teach or suggest all the claim limitations" as required to establish a *prima facie* case of obviousness. MPEP § 2142. Applicant therefore respectfully requests that this rejection be withdrawn.

**35 U.S.C. § 103(a) Rejection of Claim 16 as Being Obvious Based on Day in View of Gurrieri**

The rejection provides that Claim 16 is obvious based on Day as Day was applied in rejecting claims 9, 13, 15, and 17 in light of Gurrieri, U.S. Patent No. 3,579,657. Gurrieri provides the motivation to add a weight 28 and the rejection further notes that the location and amount would have constituted an obvious expedient in choice to an ordinary artisan.

As discussed above, Day does not anticipate claim 9, the claim from which claim 10 depends. Gurrieri is directed toward an invention that pumps water from the top of a pool cover and does not teach or suggest the motivation to include a debris filter disposed within an aperture in the pool cover because the Gurrieri invention rests on top of the pool cover. Thus the cited references do not "teach or suggest all the claim limitations" as required to establish a *prima*

*facie* case of obviousness. MPEP § 2142. Applicant therefore respectfully requests that this rejection be withdrawn.

**Objection to Claims 1-5, 7, 8, and 14 as Not Reading on the Elected Embodiment**

Claims 1-5, 7, 8, and 14 have been objected to as not reading on the elected embodiment of Figure 3. Applicant respectfully traverses this objection on the ground that in the Office Action that was mailed on May 23, 2005 Applicant was given the choice of electing between the embodiments shown in Figures 1, 5, and 6. Applicant elected the claims illustrated in Figure 1. Applicant therefore does not understand the reference to “the elected embodiment of Fig. 3” in the objection. However, Applicant believes that this issue is moot. As discussed above, the rejection of claim 1 should be withdrawn. Since the May 23, 2005 Office Action concluded that claim 1 is a generic, linking claim, the removal of the rejection of claim 1 necessitates the removal of this objection.

Applicant respectfully traverses the conclusion that “Fig. 3 lacks the substance of the phrase bridging [sic] lines 5-6 of claim 1.” For the purpose of responding to this Office Action, Applicant assumes that this objection is being made on the basis that Fig. 3 does not show a debris filter, *i.e.* language bridging lines 5-6 of claim 1. Applicant respectfully disagrees if this is the basis of the objection. Drain cover 32 is the debris filter shown in Fig. 3. On page 7, lines 17-20, the specification describes the filtering function of the drain cover, noting that the preferred embodiment “facilitates drying of debris that cannot make it through the openings 38 in the drain cover 32.” Thus the specification teaches that one of the functions of the drain cover is to filter out debris that cannot make it through the openings in the drain cover. Applicant therefore respectfully requests that this objection be withdrawn.

With respect to the objection to claim 14, Applicant has amended claim 9 to include the limitation that the drain assembly includes a basin. This makes it clear that the conduit in which

the weight is disposed in claim 14 includes the basin, and the placement of a weight inside the basin is present in the specification at page 7, lines 21-22 and in Figure 3, dead weight 58 placed into basin 40. In light of this amendment, Applicant respectfully requests that this objection be withdrawn.

#### **Objection to Drawings**

The drawings are objected to as not showing “the substance of claim 10, i.e. ‘[at least a portion of said debris filter extends through said aperture in said pool cover and is] disposed beyond said bottom surface [of said pool cover].’”

Applicant respectfully traverses this objection. The exploded view in Figure 3, as explained on page 7, lines 8-12, shows that the debris filter, drain cover 32, fits at least generally within aperture 30 and abuts cover supports 41 of the basin 40. Because the drain cover abuts the cover supports on the basin, a portion of the drain cover is necessarily “disposed beyond said bottom surface [of said pool cover].”

#### **NEW CLAIMS**

Applicant has added new claims 31-43 to clarify his invention further. Claim 31 is an independent claim, and claims 32-40 depend either directly or indirectly from claim 31. Applicant therefore directs his remarks to the patentability of claim 31.

Stern, Crandall, and Loft, Jr. do not anticipate claim 31 because claim 31 requires the presence of a basin as discussed above regarding the rejection of claims 1 and 9.

Day does not anticipate claim 31 because the floating roof disclosed by Day does not anticipate the pool cover limitation and because Day does not enable the practice of a drain assembly that attaches to a pool cover that is a thin, flexible membrane as discussed in detail above regarding the rejection of claim 9 as anticipated by Day. Moreover, new claim 31 includes additional structure, the support retainer, that is not taught or disclosed by Day.

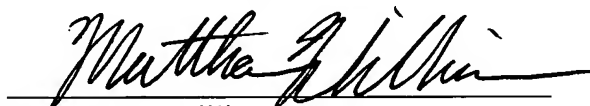


Applicant therefore respectfully submits that claim 31 and claims 32-40 that depend either directly or indirectly therefrom, are patentably distinct from the cited prior art.

Claim 41 is an independent claim. This claim is directed toward a pool system that requires in part the same elements as the pool cover drain assembly of claim 31. Since claim 31 is patentably distinct from the prior art, as discussed above, Applicant respectfully submits that claim 41 and claims 42 and 43, which depend either directly or indirectly from claim 41, are patentably distinct from the prior art.

If a telephone conference would advance the prosecution of this application, the undersigned may be called at 502-562-7378. Alternatively, H. Roy Berkenstock may be contacted at 901-537-1108.

Respectfully submitted,



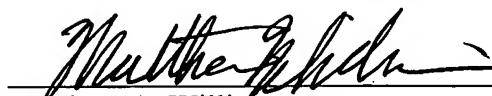
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